IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11417 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SARDAR PATEL EDUCATION TRUST

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11417 of 2001

MR HJ NANAVATI for Petitioner No. 1-2

MS SONAL VYAS, A.G.P for Respondent No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 24/06/2002

ORAL JUDGEMENT

Rule. Learned A.G.P. Ms. Sonal Vyas waives service of rule.

The petitioners Sardar Patel Education Trust and

N.S Patel Arts College, Anand have challenged in this petition the impugned circular dated 30th May, 2002, Annexure - A issued by the respondent no. 2 compelling the grant-in-aid institution to first make the payment of medical reimbursement from its own fund. The challenge is based on the ground that the impugned circular at Annexure - A is arbitrary, discriminatory and violative of Article 14 and 16 of the Constitution.

It is the case of the petitioners that Shri K.B. Patel had kidney problem in 1999. Therefore, he had to undergo the treatment for his kidney at Nadiad Kidney Institute which is a recognised institute for the purpose of medical reimbursement as per Government Resolution dated 03.08.1992. Till May, 2000 he was directly reimbursed by the State Government for his treatment, subject to certain conditions.

However, the respondent no. 2 has issued circular, 'Annexure - A' dated 30th May, 2000 for reimbursement of medical charges whereby all grant-in-aid colleges were compelled to first reimburse to its employees and then claim from the Government, at the time of payment of yearly grant to the institution.

From the averments made in paragraph 3.1 of the petition, it is clear that earlier the reimbursement was made directly by the Government under the Gujarat Civil Services (Medical Treatment) Rules, 1988 framed by the Government. Therefore, by issuing executive instruction under the impugned circular at 'Annexure - A ' the Government cannot compel the grant-in-aid institution to first make payment and then apply for reimbursement. The same is clearly arbitrary, discriminatory, therefore, it has to be quashed and set aside.

Before parting, it must be stated that though duly served no reply affidavit is filed in the matter. However, learned A.G.P. Ms. Vyas tried to submit that with bonafide intention the impugned circular dated 30th May, 2000 was issued by the respondent no. 2 so that the employees may get the reimbursement quickly. This submission has no force. As per the rules and the prevailing practice till May, 2000, the employees were directly getting reimbursement from the State Government and to issue such circular and compel the grant-in-aid institutions to first make the reimbursement and then apply before the state government would obviously be bad in law.

In view of the above discussion the impugned

circular, Annexure - A dated 30th May, 2002 is hereby quashed and set aside. Rule made absolute with no order as to cost.

(B.J. SHETHNA,J.)

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